

STATE OF U.P AND ANR.
v.
JOGENDRA SINGH AND ANR.

NOVEMBER 28, 1997

[SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.]

Service Law—Uttar Pradesh Fundamental Rules—Rule 56(e) as amended by adding a proviso by U.P. Fundamental Rule 56 (Amendment Act), 1976—Applicability—Voluntary Retirement—Persons who retired at a time when proviso was not there—Whether can claim benefit of the proviso—Held, No—Amending Act did not make the amendment retrospective.

Respondent 1 while holding the post of Senior Prosecuting Officer, took voluntary retirement under Fundamental Rule 56 of Uttar Pradesh Fundamental Rules after completion of thirty one and a half years of service on 12-4-1976. He was granted retirement benefits including pension and gratuity accordingly. In 1989 about 13 years after the amendment of Rule 56 by the Uttar Pradesh Fundamental Rule 56 (Amendment Act), 1976 respondent 1 filed a writ petition claiming the benefit of the proviso to FR-56(e), contending that although he had retired at a time when the proviso was not incorporated in the Fundamental Rules, he should be given the benefit of the proviso and an additional service of one and a half years should be counted for the purposes of his pension and gratuity. Writ petition was allowed by the High Court, against which the present appeal had been filed by the State.

Allowing the appeal, the Court

HELD : The first respondent was governed by the Uttar Pradesh Fundamental Rules. On the date when he took voluntary retirement and left service he was given retirement benefits on the basis of the Fundamental Rules and other provisions which were then in force. Fundamental Rule 56 has been subsequently amended by an amendment which came into force on 18th November, 1976 because the amendment inserting the proviso came on the statute book on that date. It will, therefore, be applicable to all those who take voluntary retirement after the proviso was inserted. All laws in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. The Amending Act did not make the amendment

- A retrospective. Therefore, persons who retired at a time when the proviso was not on the statute book cannot claim the benefit of the proviso. The first respondent having retired prior to the insertion of the proviso in Fundamental Rule 56(e), cannot claim the benefit of the proviso. However, in the case of the respondent, the Court did not propose to interfere with the order granting any benefit to him of the impugned order in view of the special facts of the case. [583-F-H; 584-B]
- B

D.S. Nakara & Ors. v. Union of India, [1983] 1 SCC 305, distinguished.

- CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2061 of 1991.
- C

From the Judgment and Order dated 2.3.90 of the Allahabad High Court in C.M.W.P.No.2816 of 1989.

- K.S. Chauhan, (K.P. Singh) for R.B. Mishra for the Appellant.
- D
- Goodwill Indeevar for the Respondents.

The Judgment of the Court was delivered by

- MRS. SUJATA V. MANOHAR, J.** At the material time, respondent no.1 was holding the post of Senior Prosecuting Officer, Agra. The date of birth of respondent no. 1 was 20.10.1919. In the ordinary course, he would have retired on superannuation on attaining the age of 58 years on 20th of October, 1977, The first respondent however took voluntary retirement after completion of thirty one and a half years of service on 12th of April, 1976. He has been granted retirement benefits including pension and gratuity accordingly. Respondent no.1 took voluntary retirement under the provisions Fundamental Rule 56 Uttar Pradesh Fundamental Rules. Under Rule 56(c), "the Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of 45 years or after he has completed qualifying service fo 20 years". By the Uttar Pradesh Fundamental Rule 56 (Amendment Act), 1976, certain amendments were made to Rule 56, Under one such amendment, sub-clause (e) of Rule 56, was amended by adding a proviso. Original Fundamental Rule 56(e) provided as follows:
- E
- F
- G

- "56(e): A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule."
- H

The proviso which was added was as follows:

“Provided that where a Government servant voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less;”

The Amending Act is of 18.11.1976. Therefore, the proviso came into effect on 18.11.1976.

The first respondent contends that although he had retired at a time when the proviso was not incorporated in the Fundamental Rules, he should be given the benefit of the proviso and an additional service of one and a half years should be counted for the purposes of his pension and gratuity. He filed in February 1989, about 13 years after the amendment, a writ petition in the High Court claiming the benefit of the proviso to Fundamental Rule 56(e). His writ petition has been allowed by the High Court and hence the present appeal has been filed before us by the State of U.P.

The claim of respondent no.1 has been allowed by the High Court on the basis of the ratio of the decision of this Court in *D.S. Nakara & Ors. v. Union of India*, [1983] 1 SCC 305. The ratio in *Nakara's* case (supra), however, is not applicable in the present case. In *Nakara's* Case (supra), a specific cut-off date was provided for the grant of pensionary benefits. Those who had retired prior to that date were not given the benefits. This was considered as arbitrary in the facts and circumstances of that case. There is no question of any cut-off date being prescribed in the present case. The first respondent was governed by the Uttar Pradesh Fundamental Rules. On the date when he took voluntary retirement and left service, he was given retirement benefits on the basis of the Fundamental Rules and other provisions which were then in force. Fundamental Rule 56 has been subsequently amended by an amendment which came into force on 18th of November, 1976 because the amendment inserting the proviso came on the statute book on that date. It will, therefore, be applicable to all those who take voluntary retirement after the proviso was inserted. All laws, in this sense, are prospective unless they are made retrospective either expressly or by necessary implication. The Amending Act did not make the amendment retrospective. Therefore, persons who retired at a time when the proviso was not on the statute book cannot claim the benefit of the proviso. The first respondent having retired prior to

- A the insertion of the proviso in Fundamental Rule 56(e), cannot claim the benefit of the proviso.

The appeal is therefore, allowed and the impugned order of the High Court is set aside. However, at the time when special leave was granted in the present appeal, it was limited to the question whether an employee who had retired before the introduction of the proviso would be entitled to the benefit of that proviso for the purpose for computation of pension or gratuity. This Court had made it clear that in the case of the respondent, the Court did not propose to interfere with the order granting any benefit to him of the impugned order in view of the special facts of the case. We order accordingly.

- C There will be no order as to costs.

R.A.

Appeal allowed.